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Supreme Court of the United States
OF THE
OCTOBER TERM, 1944

No. **439**
.....

SALT RIVER VALLEY WATER USERS' ASSO-
CIATION, a corporation,
Petitioner,

vs.

CHARLES F. REYNOLDS, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT
OF APPEALS
FOR THE NINTH CIRCUIT
AND
BRIEF IN SUPPORT THEREOF.

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To the Honorable the Supreme Court of the
United States:

The petitioner, Salt River Valley Water Users'
Association, a corporation organized under the laws

of the State of Arizona, with its principal place of business at Phoenix, in said State, prays that a writ of certiorari issue to review the judgment and decree of the Circuit Court of Appeals for the Ninth Circuit, entered in the above entitled cause on the Thirtieth day of June, 1944, (R. 331-332) reversing the judgment of the District Court of the United States for the District of Arizona, dated the Twenty-fourth day of September, 1943. (R. 318, 321).

SUMMARY STATEMENT OF MATTER INVOLVED

This action was commenced (R. 1-11) in the District Court of the United States for the District of Arizona, on May 25, 1942, by respondents, totaling 105 in number, against petitioner, herein, Salt River Valley Water Users' Association, a corporation, to recover claimed over-time compensation and liquidated damages due them under the provisions of the Act of June 25, 1938, 52 Stat. 1060; 29 U.S.C.A. Sec. 201-219, known as the "Fair Labor Standards Act of 1938". Of said total of 105, 37 of said respondents are or were employed by petitioner in the capacity of *zanjeros*; 8 in the capacity of pump operators, and 60 as maintenance men. (R. 2-3, setting forth names of specific respondents employed in each such capacity).

To the end that this Court may have before it the correct factual situation for its assistance in the determination of the ultimate issue involved, i.e: Whether respondents, in the performance of their several duties as employees of petitioner, are engaged in commerce, or in the production of goods for commerce within the scope of the Act above cited, we deem it

necessary to set forth, perhaps at greater length than would otherwise be justified, the reasons for petitioner's corporate existence, the functions discharged by it, and relation thereto of respondents.

The Salt River Valley, located in central Arizona with the city of Phoenix as its heart, is by nature an arid region. To support life for its inhabitants, from prehistoric times until the present, water must be procured from the scanty and intermittent streams of that area, namely, the Salt River and its tributaries, for the irrigation of the fertile lands encompassed therein. Prior to the turn of the present century and for some time thereafter, this was accomplished through the exertions of the individual landowners, in diverting by means of brush or other crude dams, water from the Salt River at such times as it existed therein, and conveying the same comparatively short distances to the lands upon which it was beneficially applied. Said River and its tributaries being then uncontrolled by any effective means, at times of high water such makeshift dams washed out, and long ere they could be repaired or replaced, the water was gone. Furthermore, there being no works for storage, water could not be accumulated against periods of drouth, and the pioneer farmers of the region led a most precarious existence. To construct the great dams and reservoirs required to overcome such conditions was utterly beyond the financial means of the residents of the area until the passage in 1902 by the Congress of the National Reclamation Act (32 Stat. 388, 43 U.S.C.A. 309). Under this Act, the Salt River Project, including Roosevelt Dam, was constructed by the Bureau of Reclamation, Department of the Interior, and operated by it as a Federal Reclamation

Project until November 1, 1917, under a contract between the United States and petitioner such operation was turned over to petitioner (R. 182). However, until repayment to the Federal government of the many millions of dollars advanced by it in the construction of Roosevelt Dam and the Salt River Project in general, title to all dams and project works remains in the United States, "and until otherwise provided by Congress." 43 U.S.C.A. Sec. 498.

The theory of the National Reclamation Act was the reclamation and development of the public domain of the United States, and in attempting to render its benefits available to the lands situate within the present Salt River Project difficulty was encountered by reason of the fact that most of the lands therein at the time of the passage of said Act were in private ownership. In undertaking a project of such magnitude it was obviously impracticable, if not impossible, for the Federal government to deal with many thousands of private landowners, and, at the instance of such government, petitioner corporation, Salt River Valley Water Users' Association, was incorporated in 1903 under the laws of the Territory of Arizona. Its Articles of Incorporation (Defendant's Exhibit A-R182, 183-226) set out in detail the objects, purposes and powers of petitioner Association. Although incorporated under the general corporation laws of the Territory (later State) of Arizona, in many respects petitioner is unique among corporations, both Arizona and elsewhere. The nature, function, powers, and legal status have frequently been before the Supreme Court of Arizona, which has declared petitioner to be:

"A mutual irrigation district, quasi-public in

character." (Orme v. Salt River Valley Water Users' Assn., 25 Ariz. 324; 217 P. 935).

"A private corporation with a public purpose and having quasi-governmental powers." (Citrus Growers Dev. Assn. v. Salt River Valley Water Users' Assn., 34 Ariz. 105; 268 P. 773).

"It is a unique entity carrying on its business of both a public and private character under two kinds of authority: One obtained from this state, and the other through contract with the government and its stockholders. So, it is seen that it is impossible to apply to the association's business and problems only the powers it obtained by its charter, or the powers, rights and duties conferred on it by its contracts with the government. If it is to be permitted to continue to exercise the powers and privileges necessary to an efficient operation, it cannot be classified and governed as either a private or a public corporation. It really is exercising to a large degree the powers of an irrigation district of the kind that may be organized under the irrigation laws of the state, especially in the matters of taxation and bond issues and in the election of its officers by popular vote. As is said in the Orme case, *supra*, it is 'a mutual irrigation district'. It was really and in fact organized to secure irrigation water for the lands of its members, under such terms and conditions as the Reclamation Act empowered the Secretary of the Interior to prescribe; and its powers and duties are largely those conferred and imposed by the Secretary in the contract with the association and its members as

set out in its charter.” (Saylor v. Gray, 41 Ariz. 558; 20 P. (2d) 441.

Although in its Articles, By-Laws and in common useage, the constituent members of petitioner are referred to as “shareholders” and “stockholders” this, perhaps, is a misnomer. (R. 229 Under petitioner’s Articles of Incorporation (Dft’s. Exhibit A,—R. 183-226, such “shares” or “stock” are owned by and forever appurtenant to the land represented thereby—not by the individuals who for the time being possess such land. Under said Articles, (Exhibit A—Article V, R. 191-199), every transfer of the title to any lands to which such rights and stock are appurtenant, whether by grant or by operation of law, ipso facto operates as a transfer of all rights to the use of water for the irrigation of said lands, and all rights arising from, or incident, to, the ownership of such stock, as well as the stock itself, to the grantee or successor in title. R. 195-196). In corporate elections each shareholder is entitled to one vote for each acre of land to which appurtenant, not to exceed in the aggregate 160 votes. (R. 203). Petition’s revenues are derived: (1) From income arising from the sale, lease, or otherwise furnishing electric or other power or power privileges; (2) from the delivery of water for irrigation, and (3) from assessments levied upon its shareholders, necessary to cover the cost of construction, improvement, enlargement, betterment, repairs, operation and maintenance of the irrigation and other works of the Association. (R. 215). The method of arriving at such assessments, and the collection thereof, are set forth in detail in the Articles. (Dft’s Exhibit A. (Art. XIII), R. 215-221). No dividends are, or can be, declared by petitioner and paid its

"stockholders" or "shareholders" as in the case of the ordinary corporation. Such shareholders benefit or profit from their membership in petitioner Association only as water for the irrigation of their lands may by the existence and functions of petitioner, be developed, stored and delivered at a cost within their ability to pay.

Upon the delivery by petitioner of such irrigation water to the lands of the shareholder entitled thereto it has no further jurisdiction or control over it, or the use made thereof by such shareholder. Furthermore, petitioner has nothing to do with the crops grown by such shareholder, or the disposition made thereof by him—whether consumed by such shareholder, sold by him in local and intra-state commerce, or in interstate commerce.

Briefly stated, the duties of such of respondents as are denominated "zanjeros" consist of receiving water "orders" from petitioner's shareholders within their particular district. Each zanjero totals the "orders" for his particular district or division daily, and communicates such total to one of four Watermasters, who colate all such water "orders" and an amount of water necessary to cover these is released from the lowest (Stewart Mountain) dam, and is diverted at Granite Reef diversion dam into the main canals of the project; thence through a subsidiary system of laterals to the premises ordering the same. When such water arrives within his particular zanjero district or division, the zanjero turns it out of the main canal and oversees its delivery to the land entitled thereto. He also notifies the landowner of the approximate time of its arrival at the land and usually sees

to adjustment of the headgate at the land, that such water may be delivered in the quantity specified, and no more. (R. 10 9;135-146; 232; 271-275). Respondent zanjeros are employed and compensated on a monthly salary basis, with often an additional allowance for housing an automobile operation expense. Of necessity they do not and cannot, work any fixed or specific hours per day, days per week, or weeks per month. Their hours of service are dependent entirely upon the existing water conditions in their particular district or division. During certain months of the year when water demands are heavy they may be on duty many hours more than 40 hours per week. At other seasons of the year when water demands are light or where there is no demand at all, such as the rainy season in the wintertime, their time is largely their own to do with as they please. There is no way of determining at the time the water is used whether the crops grown upon the land will go into Interstate Commerce. That fact often is not known, and cannot be known for many months thereafter.

Petitioner has approximately 200 wells and pumps scattered over its entire project, some of which provide water for irrigation, supplementing that available from surface gravity sources, and other drainage to prevent waterlogging of the project. (R. 148-159; 237; 275-277; 281-282). Of such total, probably 60 or 70 pumps are operated by 60 cycle power, and the balance by 25 cycle power. R. 282). The eight respondents denominated "pump operators" (R. 2), operate and service these pumps.

Respondents denominated "maintenance men" (R. 3), clean and maintain the project canals, laterals

and ditches through which irrigation water is conveyed to the lands of petitioner's shareholders after its diversion from the Sale River. These consist of ordinary day labor (usually Mexicans or Indians), operators of mowing machines and weed burners to clean weed and other growths off of canal and ditch banks, operators of dredging and drag-line machines, carpenters, tractor operators, horse drawn equipment, etc. (R. 128-132; 235-236; 277-278).

Both in the construction of the original, or Roosevelt Dam, by the Federal government, and three dams subsequently constructed on the Salt River by petitioner through private financing, provision was made for the generation of hydro-electric energy. Water released from Roosevelt Dam is utilized in the generation of such energy, and further utilized for such purpose in its passage through the lower dams: Horse Mesa, Mormon Flat, and Stewart Mountain, on its passage down the Salt River until its final diversion for irrigation into petitioner's canal system at Granite Reef diversion dam. Even thereafter, some power is generated by such water at suitable points along such canal system. Further electrical energy is generated by a steam and Diesel plant operated by petitioner. (R. 280). The power generated by petitioner's works, either hydro or otherwise, is 25 cycle, and, where 60 cycle power is required, must be fed through frequency changers. (R. 280-281). Petitioners power demands are such that, to supplement that available from the sources above enumerated, an additional amount is acquired by purchase from government works located on the Colorado River; under the contract for which, such power is delivered to and received by petitioner on the eastern bank of the Colorado River in Arizona

(R. 280). Petitioner's power, whether developed by its own works or acquired by purchase, is used by it in the operation of project works and sold to individuals, shareholders and otherwise, corporations, irrigation districts, etc.

The employees of petitioner's power department, that is to say, its employees engaged in the operation and maintenance of generating apparatus in power houses (whether at dams or along its canal system), the transmission and utilization of such energy, are not parties to this action and in nowise concerned therein. As previously stated, respondents consist entirely of zanjeros, pump men, and irrigation maintenance men. The theory of respondents' action (rejected by the District Court, but upheld by the Circuit Court), is that respondents are engaged in the production of goods for commerce and within the Fair Labor Standards Act of 1938, for the reason that the irrigation water conducted by them, or through facilities maintained by them, is utilized (not by petitioner but by the farmers who are constituent members of petitioner) in the growing of crops and other products of the soil which may or may not ultimately, through a complex chain of marketing over which neither petitioner nor its shareholders have any supervision or control, find their way into the stream of commerce. Further, in the case of respondent "pump men", that they are engaged in interstate commerce because of the fact, if it be a fact, such respondents "in addition to supplying water to (petitioner's) shareholders, are engaged in bringing electricity into the state." (R. 339). While it is undisputed, and as found by the Circuit Court (R. 339-394), large quantities of the crops produced by petitioner's share-

holders ultimately find their way into commerce, it is likewise a fact that large quantities thereof do not enter into such commerce, but are consumed locally in purely intra-state transactions. (R. 161-162; 258; 310-314).

The District Court found as a fact and concluded as a matter of law (R. 318-321): (1) That respondents, in the performance of the services for petitioner, mentioned in their complaint, were not engaged in commerce or in the production of goods for commerce, or in an occupation necessary to the production thereof, within the meaning of the Fair Labor Standards Act of 1938; (2) That in the carrying on of its business and operations petitioner was a service establishment, the greater part of whose service is in intra-state commerce, by reason of which fact respondents were exempted from the provisions and benefits of said Act; and (3) That such of respondents as are employed by petitioner in the capacity of *zanjeros* are outside salesmen within the meaning of said Act, and exempt from the provisions and benefits thereof. The judgment of the District Court was that respondents, and each of them, take nothing by said action and that their complaint be dismissed. (R. 321). No evidence was taken in the District Court as to the amount of over-time compensation and liquidated damages to which respondents claimed to be entitled; the evidence being limited entirely to that bearing on the issue whether respondents were engaged in commerce or production of goods for commerce and within the Fair Labor Standards Act of 1938.

From such adverse judgment of the District Court respondents appealed to the Circuit Court of Appeals

for the Ninth Circuit (R. 322), which, after due proceedings had, on June 30, 1944 rendered its decision (R. 332), and Judgment (R. 345), reversing the judgment of the District Court of Arizona. To review such Judgment of the Circuit Court of Appeals for the Ninth Circuit, Salt River Valley Water Users' Association, a corporation, petitions this Court to grand certiorari. This Summarized Statement is necessary in the length that we make it in order to properly raise and present the questions to be raised by petitioner herein.

STATEMENT AS TO JURISDICTION

Petitioner contends that this Supreme Court of the United States has jurisdiction to grant certiorari and review the Judgment in this action under the provisions of Sec. 240 Judicial Code, Tit. 28 U.S.C.A. Sec. 347, governing certiorari to Circuit Courts of Appeals of the United States.

QUESTIONS PRESENTED

First: Whether such of respondents as are denominated "zanjeros" and "maintenance men", in the performance of the duties shown by the evidence, are engaged in the production of goods for commerce within the meaning and scope of the Fair Labor Standards Act of 1938, (Act of June 25, 1938, c. 676; 52 Stat. 1060, Tit. 29 U.S.C.A. Sec. 201-219), under the definition of "Produced" as given in Section 3 (j) of said Act, reading as follows:

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any state; and for the purposes of

this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

by reason of the fact that irrigation water conducted to the premises of members of petitioner water users' association by, or through facilities maintained by, such respondents is utilized by such members in the growing of crops, a portion of which may ultimately, through channels unrelated to such members or petitioner, find their way into interstate commerce; or whether, in the performance of such duties said respondents are engaged in a local and intra-state activity not within the purview of said Act.

Second: Whether, considered in conjunction with, or apart from, the state of facts set forth in our first Question Presented, the status of such of respondents as are denominated "pump operators", as being engaged in commerce or in the production of goods for commerce, is in anywise altered by the further fact that a portion of the electrical energy for the operation of such pumps is generated without the State of Arizona.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I.

The decision of the said Circuit Court of Appeals for the Ninth Circuit is contrary to and beyond the

scope of the decision of this Court in the case of *Kirschbaum v. Walling*, 316 U. S. 517, 62 S. Ct. 1116, 86 L. Ed. 1638, holding that in order for an employee to be deemed engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, the activities and services of such employee must have more than a tenuous relation to such production. That, as shown by the evidence in this cause, the activities of respondents bear not even a tenuous relation to commerce or the production of goods for commerce, but, on the contrary, are purely local and intra-state in character.

The decision of the Circuit Court of Appeals of the United States is contrary to the decision of this Court in the case of *McLeod v. Threlkeld* (319 U. S. 491; 63 S. Ct. 1248-1250) in that maintainance of railroad lines are as much necessary to the production of goods for commerce as furnishing the water for irrigation, as practically all crops referred to as being shipped in Interstate Commerce must be and are shipped by rail, and as the opinion in this case is inconsistent with the opinion of this Court in the *McLeod* case it should be reversed.

II.

The decision of the said Circuit Court of Appeals for the Ninth Circuit, holding that employees of a water users' association performing duties of the character shown by the evidence in this case, are engaged in commerce or in the production of goods for commerce, involves an important question of Federal law, to-wit: The construction and application of the Fair Labor Standards Act of 1938 to the operations of

water users' associations, irrigation and water conservation districts.

WHEREFORE your petitioner, Salt River Valley Water Users' Association, a corporation, respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket "No. 10,618, Charles F. Reynolds, et al., Appellants, vs. Salt River Valley Water Users' Association, a corporation, Appellee"; and that said Judgment of said United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

SALT RIVER VALLEY WATER USERS'
ASSOCIATION, a corporation

By
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DATED: September 1st, 1944.

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